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February 28, 1994

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Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation on Implementation of
Section 309(j) of the Communications Act:
Competitive Bidding, PP Docket No. 93-253

Dear Mr. Caton,

On February 28, 1994, Henry Coe, President of PlusCom, Inc., and I met with Karen Brinkmann of Chairman Hundt's office and Donald Gips, Deputy Chief, Office of Plans and Policy, to discuss PlusCom's views concerning the set aside of broadband PCS spectrum for the bidding purposes of small businesses, businesses owned by women, business owned by minorities, and rural telephone companies (the "SWMR" applicants). We also held separate meetings on the same day with Rudy Baca of Commissioner Quello's office and James Coltharp of Commissioner Barrett's office. This issue is now before the Commission in connection with the above-referenced Notice of Proposed Rulemaking, 8 FCC Rcd 7635, 7655 ¶ 121 (1993) ("NPRM"). Therefore, in accordance with Section 1.1206(a)(2) of the Commission's Rules, we hereby submit to you an original and one copy of the views expressed at this meeting, as set forth below.

- PlusCom, Inc. (Personal Link Universal Service Communications) is a new company formed with the intention of entering the PCS licensing process. PlusCom is a privately-owned minority corporation operating under the SBA small business eligibility

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guidelines. Therefore, PlusCom qualifies to bid for any PCS spectrum set aside for SWMR applicants.

- PlusCom fully supports the Commission's proposal to set aside two blocks of spectrum nationwide, one of 20 MHz (Block C) and one of 10 MHz (Block D), to be auctioned off only to SWMR applicants.
- As the Commission noted in the NPRM, Congress mandated that the Commission ensure economic opportunity for SWMR applicants, 47 U.S.C. § 309(j)(4)(D).
- Entities such as Tier 1 Local Exchange Carriers, Interexchange Carriers, and large cable companies are expected to bid millions of dollars on PCS licenses. Without some control mechanism, these multi-billion dollar entities will be able to outbid any and all SWMR applicants in any auction.
- Even if SWMRs receive a bidding preference of some sort, the large companies can easily outbid SWMRs by more than the amount of the preference margin given to a SWMR. In effect, a bidding preference is no more than a token gesture that will result in very few, if any, licenses obtained by SWMRs.
- By setting aside spectrum only for SWMR bidders, the Commission will safeguard SWMR applicants from having to bid against these entities with far greater resources. Instead, SWMR applicants will only bid against one another for spectrum, thereby insuring economic opportunity for SWMR applicants, and carrying out the Congressional mandate.
- It is also critical that the SWMRs receive their 20 MHz of set aside spectrum within the 1850 - 1890/1930 - 1970 MHz bands. The SWMRs need lower band spectrum to be competitive with non-SWMRs. The 2130 - 2150/2180 - 2200 MHz band has much heavier point-to-point microwave use than the lower bands. In addition, equipment development for the upper bands lags behind the lower bands, and propagation characteristics are not as good for the upper bands, requiring more cell sites and hence a more expensive build out of a system.
- To ensure that SWMRs can qualify to place a bid, PlusCom is convinced that it is necessary to have very low application entry fees. The NPRM proposes a 2 cents per pop per MHz entry fee for all PCS applicants. NPRM, 8 FCC Rcd at 7656 ¶ 126. PlusCom believes this

is way too high for SWMRs, because it would greatly limit the number of auctions a SWMR could enter. In order to successfully bid some markets, a SWMR would have to participate in many auctions, knowing that it will win only a very small percentage of the auctions it enters. PlusCom proposes that 2/1000 of a cent per pop per MHz would be much more reasonable an entry fee for SWMRs. Furthermore, SWMRs should be able to apply the qualifying money from losing auctions to the downpayment of the purchase price of a winning auction.

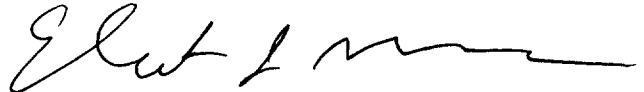
- PlusCom supports payment of the license over the 10 year license term for SWMRs, with a 10 percent down payment the first year. By definition, small businesses have very little capital and will need all their capital for the build out. Therefore, stayed payments will free up this capital for a SWMR build out of the system.
- PlusCom supports tax credits for SWMRs. This will ease the capital burden on SWMRs. In addition, PlusCom believes that the tax credit should be given to the entire licensee entity. This would encourage equity funding of SWMRs by larger companies.
- PlusCom supports a maximum equity ownership of 49.99 percent by non-SWMRs in a SWMR entity. Any larger amount would defeat the SWMR set aside and would end up turning a SWMR into a de-facto non-SWMR.
- Furthermore, the competitive bidding rules should include safeguards to deter mere speculators from bidding for SWMR set-aside spectrum.
- The NPRM proposes numerous anti-trafficking safeguards for the SWMR set-aside spectrum. NPRM, 8 FCC Rcd at 7648-50 ¶¶ 82-89. PlusCom is of the opinion that a three to five year "premature" period is appropriate for any anti-trafficking safeguards that may arise from this rulemaking.
- However, PlusCom also believes that a SWMR licensee which must sell its system during the anti-trafficking period due to business failure reasons should be allowed to sell its system to another SWMR. That way, a SWMR which is more capable of providing service and running a successful business can buy the system. By limiting the sale to another SWMR, the original licensee would not receive the unjust enrichment that

it would receive it if sold to a non-SWMR, and the economic opportunity for SWMRs is preserved.

- To further discourage speculation and spectrum warehousing in the licensing of all PCS spectrum, PlusCom proposes that the Commission enforce build-out requirements for PCS auction winners such as those described for PCS in the Second Report and Order, Gen. Docket No. 90-314, 8 FCC Rcd 7700, 7754 ¶ 134 (1993). Under that requirement, PCS licensees must offer service to one-third of the population in each market area within five years, two-thirds within seven years, and 90% within ten years of being licensed.

If the Commission has any questions regarding the information and/or opinions expressed in the above letter, please contact this office.

Respectfully submitted,



Eliot J. Greenwald

8441-000

cc: Rudy Baca
Karen Brinkmann
James Coltharp
Donald Gips